

Development of the human rights situation in Germany July 2019 - June 2020: Report to the German Federal Parliament in accordance with section 2 (5) of the act on the legal status and mandate of the German Institute for Human Rights; Executive summary

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German Institute
for Human Rights

Executive Summary

Developments of the human rights situation in Germany July 2019 – June 2020

Report to the German Federal Parliament
in accordance with section 2 (5) of the
Act on the Legal Status and Mandate of
the German Institute for Human Rights

About the report

Each year, the German Institute for Human Rights submits a report on the developments in the human rights situation in Germany to the German Bundestag, in accordance with section 2 (5) of the Act on the Legal Status and Mandate of the German Institute for Human Rights (DIMRG: Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, of 16 July 2015). The report is presented on the occasion of International Human Rights Day on 10 December. The Act on the Legal Status and Mandate of the German Institute for Human Rights provides that the German Bundestag should respond to the report. The 2019/2020 report, the fifth such report to be issued, covers the period from 1 July 2019 through 30 June 2020.

By requesting an annual report on developments in the human rights situation in Germany, the Federal Parliament and the Federal Council have emphasised that respecting and realising the human rights of all persons in Germany is an ongoing responsibility for all public authorities, as new challenges continually arise. This is why the Basic Law (Grundgesetz), Germany's constitution, demands that the impacts of legislation on human rights be reviewed regularly and that adjustments be made when needed, through legislation or by changing administrative practices. Moreover, political and societal changes, international or domestic developments, and scientific and technological progress can give rise to new challenges to human rights. Recognising such challenges and developing human rights-based solutions to them is crucial. This report is intended to contribute to both: the assessment of the human rights impact of laws and the identification of new human rights challenges and the identification of areas where new human rights risks demand a political response.

All documents and further information about the report are available at www.institut-fuer-menschenrechte.de/menschenrechtsbericht2020

The Institute

The German Institute for Human Rights is the independent National Human Rights Institution of Germany (§ 1 GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Introduction

The COVID-19 pandemic poses challenges unique in both kind and consequences for Germany, as it does for all countries worldwide. The fifth Report on the Development of the Human Rights Situation in Germany (1 July 2019 – 30 June 2020) does not lend itself to a comprehensive account of how the federal and federal-state (Länder) governments have dealt with the pandemic thus far and a definitive assessment of their response from a human rights perspective. Despite the hopes of many, the coronavirus pandemic, now in its second wave, is once again dominating political and social life, and no one can foresee what new challenges the coming months will bring.

The fundamental rights guaranteed in the Basic Law (Grundgesetz) are the standard against which the actions of the federal and Länder governments are measured – all actions taken by Germany, not only those taken in response to the pandemic. The internationally guaranteed human rights flesh out and strengthen these fundamental rights.

The first section of the human rights report presents the principal outcomes of reviews of Germany's human rights record. The European Convention on Human Rights takes on a special role in this context, as its 70th anniversary was celebrated on 4 November 2020.

Although a great deal of political and public attention is focused on dealing with the COVID-19 pandemic, and rightly so, Germany still faces human rights challenges in other areas of policy as well. This year's human rights report addresses two issues in depth: ill-health in the context of deportation and the vocational training of persons with disabilities.

In Germany, the deportation of persons who are seriously ill is not permissible if it would result in a serious decline in their state of health or might even put their lives at risk. In such cases, the initial responsibility lies with the persons who are ill: they are required to produce evidence of their illness. In many cases, people are unable to meet this requirement due to accelerated asylum procedures; a lack of access to information, language interpretation and/or medical specialists;

or bureaucratic or financial barriers. This renders it all the more important for the State to conduct a thorough investigation to ascertain whether an "impediment to deportation" on health grounds exists.

After completing their schooling, young persons with disabilities – like all young persons – should have the possibility to enter a programme of vocational training in a regular training occupation. In reality though, the majority of them receive their vocational training in "special forms" of training, with the result that they are unable to make the transition to the regular labour market. The State has an obligation under the UN Convention on the Rights of Persons with Disabilities to respond to this situation and guarantee non-discriminatory access to vocational training for everyone.

The last section of the report presents recent developments relating to selected issues examined in previous years' reports. Thus, one can obtain a good overview of the human rights situation in Germany by reading this section together with the similarly structured sections in the reports of previous years, going back to 2016.

The report is based on data from a range of sources. The Institute performed its own qualitative research into some issues. It also evaluated publicly available statistics, studies, documents of the German Bundestag and of the parliaments of the Länder. In addition, the Institute collected data from the Länder governments by way of a questionnaire. We would like to take this occasion to express our thanks to the individual ministries that completed this questionnaire. We also wish to thank all of the interview partners who provided us with information during the course of our research for this report.

The issues in the focus of this year's report illustrate the continual nature of the task of protecting the fundamental and human rights of persons in vulnerable situations and ensuring that everyone has access to education to enable every human being in Germany to develop to their fullest potential. Good policymaking requires a sharp eye on facts and developments. We hope that the federal and Länder governments will take up the findings and recommendations presented in this report.

1 Germany within the System of Human Rights Protection

Germany has committed to upholding fundamental and human rights, both in its constitution, the Basic Law (Grundgesetz), and by ratifying numerous international and European human rights treaties. Section 1 of the report presents the major developments of relevance to Germany in the international system of human rights protection in the period from 1 July 2019 through 30 June 2020.

As 2020 marked the 70th anniversary of the adoption of European Convention on Human Rights, the report contains a timeline highlighting the milestones in the history of this instrument. In the period from 1 July 2019 to 30 June 2020, the following European monitoring bodies presented their assessments of the status of implementation of their respective treaties and their recommendations to Germany:

- the European Commission against Racism and Intolerance
- the European Committee of Social Rights

Their observations and recommendations are summarised in the report.

2 Young Persons with Disabilities: Recognised Vocational Training rather than “Special Paths”

The right to pursue a freely chosen occupation implies the possibility to shape one’s own life on the basis of self-determination, including the possibility to make one’s own economic choices, and social participation. For many persons with disabilities, however, the door to the pursuit of an occupation suited to their inclinations and abilities remains closed. Studies have shown that **the vast majority of young persons who have a disabili-**

ty complete their vocational training outside of the regular training system. In the majority of cases, the training they receive in special forms of vocational training does not lead to a recognised qualification enabling transition to the regular labour market.

It is imperative that the State addresses this situation: imperative because occupational qualifications are the key that opens the door to access to the regular labour market and a life shaped by one’s own choices. The UN Convention on the Rights of Persons with Disabilities (UN CRPD) has the force of law in Germany. Thus the State has an obligation to implement the right to access to vocational training without discrimination, as articulated in the right to education (article 24 of the UN CRPD) and the right to work (article 27 of the UN CRPD). **There must be one inclusive, regular training system for all trainees, just as there must be one inclusive school system for all pupils.**

Official vocational and education training (VET) statistics do not allow data to be disaggregated on the basis of disability status, **so comprehensive data indicating how many young persons with disabilities enter training in the regular system are not available.** Moreover, only a very limited amount of research has been conducted into the occupational paths of former pupils with special educational needs – many of whom are young persons with disabilities. For this reason, debate in this field must be based on other data. Such as these:

- **Less than ten percent of the 50,000 school leavers who received special educational support in Germany begin in-company training in a recognised training occupation after leaving school,** according to an estimate published by sociologists Jan Jochmaring and Katharina Rathmann in 2018. Moreover, some of these do so only after first completing a vocational preparation scheme as an intermediate step.
- The vast majority – estimated at 80 to 90 percent by Jochmaring in 2019 – of young persons with special needs initially enter a vocational preparation scheme after leaving

school. Although the purpose of these schemes is to smooth their path into a regular programme of vocational training, this is not usually the case: **it is often the case that young persons with special needs do not go on to enter regular VET.**

The training leading to “Fachpraktiker” qualifications comprises part of the training system specifically for persons with disabilities, but part of the transition system is also intended specifically for persons with disabilities. The extra-company training centres are often attended by persons with disabilities as well.

Both of the two core statutes regulating vocational training – the Vocational Training Act (Berufsbildungsgesetz) and the Crafts and Trade Code (Handwerksordnung) – provide that school-leavers with disabilities should be trained primarily in recognised occupations. In reality though, the majority of them take another path.

Against this backdrop, the German Institute for Human Rights examined the issue of access to recognised in-company training for persons with disabilities. The report presents an analysis of Germany’s human rights obligation in this area. It also presents the results of the Institute’s analysis of the success factors for participation of persons with disabilities in regular in-company vocational training, which is based on a review of scientific studies and the documentation of model projects.

In recent years, a variety of national initiatives – partnerships among federal ministries, employer associations and unions, individual companies and chambers – have become involved in promoting inclusive in-company training. **With the Act to Modernise and Strengthen Vocational Education and Training (Gesetz zur Modernisierung und Stärkung der beruflichen Bildung) and the Work of Tomorrow Act (Arbeit-von-morgen-Gesetz), the German Bundestag has also taken steps to improve particular aspects in this area,** for instance, through the introduction of greater flexibility for part-time training. Last but not least, the sheltered workshops and vocational training centres for persons with disabilities (Berufsbildungswerke) now focus more on the transition to the primary labour market. However,

the system as a whole must be changed to create inclusive regular structures. Adding disability to the characteristics covered in the vocational training statistics is a necessary step that will help make it possible to steer this change successfully.

Moving forward with **a transformation of the system** will require the introduction of a range of measures as well as better coordination among all the stakeholders involved; this relates to both the phase in which young people choose their future occupation and the phase of the training itself. The Institute’s analysis of model projects and published research revealed the following:

In the occupational orientation phase, i.e. while people are still in school, there is a need for teachers and occupational guidance counsellors who can both provide **young persons with disabilities with unbiased advice** and offer them a choice of occupations that is comparable, in terms of the range of occupations represented, to that available to their non-disabled peers. This requires that teachers should be familiar with the possibilities for training-related funding and support and be able to call in external advisors – inclusion consultants, for example. This, in turn, requires cooperation between schools and the local employment agencies, professional chambers and chambers of commerce, trade guilds, employer associations and unions – for example, in the context of career pathways conferences.

Further, young persons with disabilities should have the opportunity, for instance, to “get a feeling for” **various occupational fields through in-company internships.** Surveys of companies and pilot projects have shown that a company is more likely to train young persons with disabilities if it has already had some experience with interns or other workers who have a disability. This finding should prompt employment agencies and the chambers to work closely with schools on the placement of pupils in internships.

Training phase: In order to raise the percentage of young persons with disabilities who make their way into a regular training position, **the training courses themselves must become more flexible.** There are already some kinds of vocational training that can be completed on a part-time ba-

sis. In addition, training courses should be offered in modules, and modular qualifications should be introduced. The companies that provide training and the chambers would be responsible for this; but a reform of legislation at the federal and Länder level would also be required; specifically, the Vocational Training Act, the Crafts and Trade Code and the training regulations would need to be revised.

Barrier-free working and training environments are also essential components of an inclusive training system. The federal and Länder governments should work towards having companies ensure that their training settings are barrier-free right from the start, including through a reform of workplace regulations and the Länder building codes. What is needed is both the absence of physical/architectural barriers on company premises, and **the presence of knowledge and skills relating to inclusion in companies.** To ensure equal and respectful treatment of persons with disabilities, the chambers should raise awareness about this issue in the context of their training for trainers.

Last but not least, targeted steps should be taken to provide companies interested in training young persons with disabilities with information about the relevant funding opportunities. **It is not uncommon for even large companies to be unaware of the full range of support available.** The federal, Länder and local governments should continue their efforts to disseminate this information, and above all, they should invest in good advising structures – for instance, a one-stop address for advice from designated contact persons.

Overall, institutions that work with young people in a supportive capacity should be **more consistent with respect to taking the individual young persons, with their specific needs, as the starting point** for all their activities. The recognition that “normality” means that everyone is different should underpin all of the assistance and services they provide. The aim should be to custom-design offerings to meet the real needs of the individuals they are intended for, rather than relying on scheme-like offerings whose structure is determined primarily by types of funding and abstract legal categories.

There must be one inclusive, regular training system for all trainees in Germany. Continuing to maintain two parallel systems over the long term – a regular training system and one specifically for persons with disabilities – cannot be reconciled with Germany’s human rights obligations.

3 Deportation and ill-health: Perspectives from Practice and Human Rights Obligations

In Germany, seriously ill persons cannot be deported if this would result in a serious decline in their state of health or even put their lives at risk. The authorities must ensure at all times that no person is put in a life-threatening situation by a deportation; if they cannot do so, they must not order/proceed with it. “At all times” here means: during the review of an application for asylum by the Federal Office for Migration and Refugees (BAMF: Bundesamt für Migration und Flüchtlinge), during an immigration authority’s preparation for the deportation of a person and during the deportation operation carried out by the police of the relevant Land (federal state) and the Federal Police. The fundamental and human rights to life and physical integrity demand this, as does the non-refoulement principle of international law. There is always the potential for conflict between these duties to protect human rights, on the one side, and the state aim of enforcing an obligation to leave the country (Ausreisepflicht) as efficiently as possible.

In 2016 and 2019, amidst the ongoing political debate in Germany about increasing the number of deportations, the German Bundestag **toughened the rules governing the recognition of a serious illness as an impediment to deportation** (Abschiebungshindernis).

It is difficult for an asylum seeker or someone already under an obligation to leave the country who is seriously ill to meet the statutory requirements (sect 60a, subsect 2c and 2d

of the Residence Act [Aufenthaltsgesetz]) for the recognition of an impediment to deportation due to ill-health. The competent authorities regularly invoke the fact that the burden is on the person who is ill to demonstrate grounds for an impediment and often fail to consider other indications that someone has a relevant health condition. This can result in the deportation of persons whose state of health should have precluded a deportation. During the asylum procedure for a person with a relevant health condition, the BAMF must also ascertain whether appropriate treatment is available in the country of origin and whether the person concerned would in fact have access to such treatment there.

There are no reliable figures indicating how many seriously ill persons have been deported or how often the immigration authorities have refrained from deporting someone on medical grounds. There are voices in the political arena and in the media that have repeatedly claimed that the illnesses of people ordered to leave the country are merely feigned. There are no reliable data substantiating allegations of this kind, and in fact the few numbers that are available do not bear out this conclusion.

In the report, the German Institute for Human Rights examines the fraught issue of deportation vs. ill-health – and specifically the recognition of a serious illness as an impediment to deportation. From a **legal perspective**, it analyses the requirements arising from fundamental and human rights in relation to the deportation of persons who are ill. In an **empirical section**, it investigates how health-based impediments to deportation are demonstrated, verified and evaluated in practice. The Institute gathered the information presented in this section through interviews conducted with representatives of the BAMF and of the national and Länder (federal state) police, with members of the medical and legal professions and members of the staff of psychosocial advising services, as well as persons mandated with monitoring forced returns (forced return observers). It also requested data from the competent Länder authorities and evaluated publicly available statistics.

Obligations to produce evidence: **Initially, it is the responsibility of the persons concerned to provide information to the BAMF or the immigra-**

tion authority about an illness that might argue against deportation (Darlegungspflicht / duty to produce facts/evidence supporting a claim). The relevant statute specifies that this information must take the form of a “qualified medical certificate”. In order to be “qualified”, a medical certificate, i.e. a document issued by a doctor attesting to a person’s ill-health, must fulfil a number of criteria set down in the Residence Act. The authorities, for their part, have an obligation to investigate further and establish the facts of the case (Sachaufklärungspflicht / duty to investigate).

In practice, a number of barriers contribute to people’s failure to meet these requirements: accelerated asylum procedures, insufficient access to information, lack of language interpretation, the shortage of medical specialists, the restricted access to the health system under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz), and financial barriers. For instance, detailed expert reports of the kind frequently required to demonstrate a mental illness cost several hundred euros, in some cases well over a thousand euros, depending on how much of the specialist’s time they demand. These barriers loom particularly large for people held in detention pending deportation or living in one of the facilities that house asylum seekers from their arrival through to their return or distribution to a municipality (known as AnkER facilities) or other mass accommodation facilities located far from urban centres. It is not uncommon for people who came to Germany seeking asylum to need the help of an individual volunteer or an NGO to make an appointment with a doctor or obtain language mediation services.

In the interviews, **doctors also reported problems producing the evidentiary documents required:** producing a document that fulfils the statutory criteria requires them to have a lot of information of a kind they would not normally need. Doctors also reported the perception that the criteria applied in official decisions concerning the (non-) recognition of medical evidence are non-transparent and, in some cases, arbitrary. **In the case of mental illnesses in particular, the practitioners interviewed reported that it can often be impossible to figure out why a report was rejected.**

The Institute points out that **the obligation to produce evidence supporting a person's claim of a serious health condition does not release the authorities from their duty to investigate further and establish the facts.** The BAMF and the immigration authorities should use internal guidelines as a means to strengthen the obligation on their officials and employees to consider other non-prima facie indications of the existence of a health-based impediment to deportation, such as earlier instances of hospitalisation or the behaviour of the person concerned at the hearing. Moreover, they should be required to call in a medical specialist for advice when evaluating medical evidence or other indications of serious health condition.

Once an obligation to leave the country has been established, the competent immigration authority prepares to deport the person in question to their country of origin. **If there are indications that this person is seriously ill, the immigration authority must take precautionary measures,** for instance, verify ability to travel, send medication with the person on the trip, and provide for medical care during and immediately after the deportation process. **If the safety of proceeding with a deportation is in doubt, it must be suspended.** Fundamental and human rights impose a duty on immigration authorities to ensure that lives of person being deported are not endangered immediately before, during or after the deportation process and that deportation does not result in a serious decline in their state of health.

The interviews with doctors and forced return observers revealed that **practices vary greatly with regard to the verification of ability to travel.** This is the case, for instance, with respect to whether or not the authority has any medical investigation performed on its own behalf, and if so by whom and in what scope. The information reported by the interview partners and reports issued by human rights bodies at the national and European levels (National Agency for the Prevention of Torture; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, respectively) **cast doubt on whether adequate medical care is always available during deportation processes (with respect to the number**

and specialisation of doctors on hand) and on whether the doctors who provide this care are always acting independently.

During the deportation process – in other words, when people are picked up for and during transport to the airport, while at the airport and during the flight – the authorities involved (immigration authorities, Länder and the Federal Police) must safeguard the fundamental and human rights of the persons concerned. These rights include the right to physical integrity – the authorities have a duty to stop a deportation in the event of a serious decline in the deportee's state of health.

The deportation of persons receiving in-patient treatment in a hospital or psychiatric institution is a particularly sensitive area. Such measures always constitute a **severe interference with the rights of those persons**, and for this reason the Institute strongly urges all authorities **to refrain completely from the practice of taking persons out of a clinic in order to deport them.**

In order to recognise signs of a decline in a person's state of health, the police officers involved must have **information concerning the individual's medical condition** and the ability to communicate verbally with them. However, it is clear from the reports based on actual practice that there are frequently problems in this regard; equally clear is that it is **very difficult for people subject to a deportation to obtain access to a lawyer.** Thus, effective remedy is not fully guaranteed.

In light of all this, the Institute welcomes the fact that a system for the **independent monitoring of forced returns** is already being carried out at four airports (Düsseldorf, Hamburg, Berlin/Brandenburg, Frankfurt am Main). The task of these observers is to watch deportation operations from the time of arrival at airport through to the departure of the relevant flight. While they cannot actively interfere in deportations, there have been cases in which observers were able to mediate between state actors and persons being deported. The Institute recommends that the current practice of observing deportation operations (one of the measures called for in the EU Return Directive) should be extended. This system should **cover additional airports and additional steps**

in the deportation process, i.e. observers should also be on hand **when a person is being transported to the airport and during the flight**.

The Institute further recommends **strengthening the independent mandate** of the organisations responsible for deportation observation.

The federal and Länder governments should take the practice-based reports as cause to revise the statutory and administrative regulations on ill-health-based impediments to deportation. The Länder should introduce binding regulations ensuring that deportation operations carried out by their immigration authorities are consistent with human rights and non-discriminatory. The initial duty to produce facts supporting a claim that is borne by seriously ill persons who have applied for asylum in Germany must not lead authorities to neglect their own duty to investigate the facts. The Institute recommends the establishment of a **nationwide system for procedural/legal advising by welfare organisations** (Wohlfahrtsverbände) – one that is independent of the BAMF – in order to facilitate access to justice and information for asylum seekers.

The results of the Institute's investigation, presented in its report, indicate that there are grounds **for concern about the constitutionality of the statutory obligations to produce evidence set out in section 60a, subsections 2c and 2d, of the Residence Act in their present form. These indications should be taken seriously and the provisions in question should be amended by the Bundestag.**

4 Developments in Issues covered in Previous Reports

The final section of the report lays out developments relating to four of the issues examined in reports from previous years.

Homelessness

The issue of provision of accommodation to homeless persons by the municipalities and homeless persons' right to adequate housing was one of the focuses of the 2019 report. German municipalities house tens of thousands of homeless people in temporary accommodation. It is not unusual for people to remain in this accommodation for multiple years: given this, the minimum standards defined under the current jurisprudence are no longer compatible with the right to adequate housing (under article 11 of the International Covenant on Economic, Social and Cultural Rights).

Several policy measures aimed at preventing homelessness were introduced in the period currently under report (1 July 2019 – 30 June 2020), the second half of which was influenced in many respects by the COVID-19 pandemic. For instance, the Bundestag introduced a temporary ban on evictions for tenants unable to pay their rent, which meant that landlords could not evict tenants for non-payment of rent due to the COVID-19 pandemic during the period from 1 April to 30 June 2020. Another example is the simplification of the process for applying for SGB-II benefits (benefits under the Second Book of the Code of Social Law) to support people with low or no income.

For people who were already homeless, some municipalities came up with additional ways to provide accommodation in order to reduce the occupancy of emergency shelters and make quarantine possible for persons who had been infected. Associations of homelessness service providers have criticised **the measures adopted as falling far short of the action necessary to provide homeless persons with adequate protection against infection by the new coronavirus, in general and looking ahead to the**

winter of 2020/21. Specific criticisms related to the lack of advising services and an inability to ensure medical care, as well as the fact that high occupancy continues to make close quarters a daily reality in many accommodation facilities.

One very welcome development is the introduction of **the collection of nationwide data on the extent of homelessness starting in 2022** (Act on Reporting on Homelessness / Wohnungslosenberichterstattungsgesetz). This means that policymakers, homelessness service providers and other actors working in this area will soon have a firm basis of data on which to draw conclusions about trends and current situations, rather than having to rely only on estimates as they have up till now. The data to be collected relate to the subgroup of the homeless population in Germany made up of persons provided with accommodation by a municipality or an institution of the homelessness assistance system. It is encouraging that the “supplemental reporting” will generate knowledge about homeless persons whose situation is not yet captured by the new statistics, specifically, those living rough or staying temporarily in the homes of friends or acquaintances.

Access to education for refugee children

It has been and continues to be the case that the right to education, which every child has (articles 28 and 29 of the United Nations Convention on the Rights of the Child), is not sufficiently guaranteed for many children living in refugee accommodation facilities. **Frequently, months go by before a place at a day-care centre or school is open to children** who arrive in Germany after having to flee their homes in another country.

Like all children in Germany, children in initial reception centres for asylum seekers become legally entitled to a **place in a day-care centre** on their first birthday. However, no Land has implemented this statutory entitlement, with the exception of Saarland. The other 15 Länder take the position that the entitlement does not arise until a child has been assigned to a municipality – resulting in months of delay.

Länder also differ in their policies regarding entrance to the **school system**: in most Länder, children do not start regular schooling until they have been assigned to a municipality. Only in Berlin, Bremen, Hamburg, Saarland and Schleswig-Holstein does the obligation to attend school apply for refugee children right from the start.

Under the EU Reception Conditions Directive (article 14, paragraph 2), no more than three months may elapse before children seeking asylum or the children of asylum seekers are provided with access to and participate in the education system – in practice, this period can be longer.

This means that the education opportunities for refugee children depend on the Land in which their accommodation facility is located. This is inconsistent with the right to freedom from discrimination (article 2 of the UN Convention on the Rights of the Child).

The period currently under report saw the introduction of a provision in federal law requiring the Länder to take appropriate measures to ensure the protection of women and vulnerable persons, which includes children (§ 44, subsection 2a, of the Asylum Act). This can be done, for instance, by adopting binding concepts for the protection against violence in accommodation centres. In this area too, there is still no uniform standard of protection across the Länder.

The **COVID-19 pandemic** reduced the educational opportunities for refugee children in Germany even further: **the technological infrastructure that participation in digital education offerings requires is frequently unavailable to school-age children who live in refugee accommodation facilities**; the physical space available to them to learn in is very limited and during the period in which personal contacts were restricted, supportive offerings, such as help with homework, were dramatically cut back or completely interrupted.

Arms exports

German practice in the authorisation of arms exports was one of the focuses in the Institute's 2018 report. The Institute presented the results of its examination of whether arms exports authorised by the Federal Government were consistent with its "Political Principles governing the Export of War Weapons and Other Military Equipment" in the case of Saudi Arabia and the United Arab Emirates, countries involved in the conflict in Yemen.

In the period currently under report, **it again appeared that the provisions in the "Political Principles" relating to the human rights situation and compliance with international humanitarian law actions did not guide the Federal Government in its actions either in relation to arms exports to states in the military coalition or in relation to the temporary halt on deliveries of previously authorised exports.** A case in point: The German government authorised arms exports to a number of states engaged in the military coalition in the Yemen conflict during this period – despite a pledge in the 2018 coalition agreement to put a stop to such exports.

In December of 2019, a court heard the first litigation concerning the moratorium on arms exports to Saudi Arabia, in effect from November 2018 through 31 December 2020. Rheinmetall (MAN) Military Vehicles had filed the suit. The Administrative Court of Frankfurt am Main, the court of first instance, ruled in favour of the complainant on the grounds that the Government's decision was not well substantiated, and annulled the challenged notices, which suspended previously issued export authorisations. The Federal Government has appealed the ruling.

The conflict in Yemen remains unresolved, despite a variety of initiatives and agreements. The already dire impacts of the humanitarian crisis on the population have been further exacerbated by the COVID-19 pandemic. In the six years since the conflict erupted, no internal or external party to the conflict has been held accountable for direct or indirect military involvement in it. The Group of Eminent Experts on Yemen established by the UN Security Council has recommended that the

situation be referred to the International Criminal Court for this reason.

Business and human rights

The National Action Plan on Business and Human Rights (NAP) has figured in the human rights report every year since its adoption in December 2016. Currently in its fourth and final year of implementation, the NAP lays out how Germany intends to meet its human rights obligations in the context of the UN Guiding Principles on Business and Human Rights.

The NAP's implementation during the period under report centred largely around the review of whether and to what extent companies are meeting the requirements for human rights due diligence. The plan calls for the incorporation of human rights due diligence measures into the business processes of at least half of all German-based companies with more than 500 employees by 2020. However, the monitoring report released in the summer of 2020 estimated that only about a fifth of companies had done so. Both the NAP and the coalition agreement of the parties forming the current Government speak of legislative measures on due diligence in such a case. Accordingly, the Federal Ministry of Labour and Social Affairs (BMAS) and the Federal Ministry for Economic Cooperation and Development (BMZ) have already drawn up an initial list of key points for a human rights due diligence regulation.

There were pertinent **sector-specific developments** during the period under report: the **automotive industry** started a sectoral dialogue aimed at addressing human rights challenges in the value and supply chain, and **the textile industry** saw the BMZ announce the launch of the Grüner Knopf (Green Button), the first label identifying sustainable textiles with the imprimatur of a state, in September of 2019.

There were also developments at the policy and legislative level. In **January 2020, the Federal Government revised its Raw Materials Strategy.** The Institute welcomes the fact that the revised strategy is based on the UN Guiding Principles and the NAP. However, measures aimed

at preventing human rights abuses associated with the procurement of raw materials are lacking.

In addition, **the legislation implementing the EU Conflict Minerals Regulation in Germany entered into force in May of 2020.** This regulation is intended to ensure that companies based in the EU do not contribute, through their import activities, to the funding of illegal armed groups in the countries where certain metals and minerals are mined. However, the legislation does not include a mechanism for sanctioning companies that fail to exercise the necessary human rights due diligence.

Last but not least, the first actions were taken in the period under report relating to the previously neglected issue of remedy – grievance and complaint mechanisms available to people who claim their human rights have been harmed by a German company in another country. The Federal Ministry of Justice and Consumer Protection is funding research on alternative dispute resolution mechanisms and has published a brochure on access to justice and the courts in connection with human rights abuses falling within the responsibility of companies. Regrettably, the brochure does not go beyond listing the ways to seek legal remedy. **Access to effective remedy for persons affected by human rights abuses continues to be a major national, European and international problem; regrettably, it is also an area in which little progress has been made in the implementation of the German NAP.**

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Alison Borrowman

LAYOUT

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